IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.05.2005

CORAM:

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.36690 of 2004
and W.P.M.P.No.44047 of 2004

Dr.C.Gomathi .. Petitioner

versus

1. Government of Tamil Nadurepresented by the Secretary
Health & Family Welfare Department
Fort St. George
Chennai-600 009.

2. The Commissioner of PoliceGreater Chennai, Egmore
Chennai-8.

3. The DirectorMedical & Rural Health Services
DMS Compound
Chennai-600 006.

4. The Director of Medical EducationKilpauk
Chennai-600 010.

5. Thiru N.Thalavai SundaramMinister for Health & Family Welfare
Govt. of Tamil Nadu
Fort St. George
Chennai-600 009.

6. Dr.BalakrishnarajDean, Kilpauk Medical College
Hospital, Chennai.

7. The Regional DirectorCentral Bureau of Investigation
EVK Sampath Building
Chennai-6. .. Respondents

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PRAYER: Writ petition filed under Article 226 of the Constitution of Indiaf or the issue of a writ of Mandamus directing the Central Bureau of Investigation (CBI) represented by its Regional Director, Chennai-6, the th respondent herein to register a case on the basis of the representations made by the petitioner to the second respondent on 22.9.2003 and the subsequent representations made by the petitioner on 9.12.2003, 5.1.2004, 19.1.2004, 30.7.2004,

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11.11.2004, 27.11.2004 & 29.11.2004 to various authorities with copies endorsed to the second respondent and investigate the case and submit a report to this Court within a time frame fixed by this Court.

For petitioner : Mr.P.Veeraraghavan
Senior Advocate for
Mr.C.S.Karnan

For respondents-1 to 4 : Mr.A.L.Somayaji
Addl. Advocate General
Assisted by
Mr.D.Krishna Kumar
Special Govt. Pleader
Mr.S.Venkatesh
Special Govt. Pleader
& Mr.R.Vijayakumar
Government Advocate
Mr.E.Sampath Kumar, G.A.

For 5th respondent : Mr.N.Jothi for Mr.L.P.Shanmughasundaram
For 6th respondent : Mr.P.Sundaram Government Advocate
For 7th respondent : Mr.P.Chandrasekaran

ORDER

The petitioner prays for a Mandamus to direct the Central Bureau of Investigation (C.B.I.) to register a case on the basis of the representations made by the petitioner to the second respondent on 22.9.2003 and subsequent representations dated 9.12.2003, 5.1.2004, 19.1.2004, 30.7.2004, 11.11.2004, 27.11.2004 and 29.11.2004 to various authorities with copies to the Commissioner of Police, Greater Chennai, and to investigate the case and to submit a report to this Court within a time frame to be fixed by this Court.

2. The petitioner is a Doctor in the service of the State Government. Having regard to the nature of the prayer in the writ petition, namely, to entrust the complaint for investigation by C.B.I. and the nature of the relief which is being finally granted under this order, I do not propose to deal in a detailed manner, the pleadings, arguments, materials and various rulings submitted by both sides. I propose to restrict only to a gist of the pleadings and submissions made by both sides in order to appreciate the essentials of the complaint and the defence by the persons accused of various commissions and omissions. I am also not recording any of my impressions on the contentions by both sides, so that the proposed enquiry should not be diverted or prejudiced.

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3. According to the petitioner, she belongs to Schedule Caste community and with great difficulty, she completed her medical course in the year 1984. Her husband died in a road accident on 6.6.1989. She later underwent training in JIPMER, Pondicherry and in the same year, she joined the Government service. In the affidavit, she has given details relating to her service particulars and postings in different places. She alleges that she was transferred to various places in an unreasonable manner and in the year 2000, she was posted as Tutor in Government Kilpauk Medical College Hospital (K.M.C.H.) from 7.7.2000 and thereafter as Tutor in Madras Medical College Hospital and again to K.M.C.H. on 24.7.2003 as Tutor and as Assistant Professor.

4. According to her, the architect of such frequent transfers was the fifth respondent, who is the Minister for Health and Family Welfare Department of the Government of Tamil Nadu. According to her, eversince he came to know that she is a widow, he tried to have immoral relationship with her on several occasions, which attempts were constantly resisted by her. She would further state that the fifth respondent used to visit K.M.C.H. at 6.00 a.m. in the early morning frequently and would sit in the Dean's room mainly for the purpose of threatening her. She further states that on 19.9.2003, the fifth respondent, to the shock of everyone, came directly to the Labour Ward where she was working and started shouting at her in the presence of many persons. Therefore, on 22.9.2003, she sent a telegram to the Hon'ble Chief Minister and other authorities including the Commissioner of Police, Chennai, complaining about the mental and sexual tortures made by the fifth respondent and his close friends. After the telegram, though the fifth respondent stopped visiting the hospital, however, continued to issue instructions to the Dean to transfer her to some other place. This resulted in the Dean and other staff members allegedly indulging in torturing her and creating false evidence against her. In order to avoid and to escape from the fifth respondent, she had applied for earned leave for 71 days from 4.11.2003 to 13.1.2004. As a result of the complaint lodged by her, she was ill-treated by the Dean, the sixth respondent and the Deputy Commissioner Kamala, who came to the Labour Ward and shouted at her forcibly pushing her out of the ward.

5. The petitioner states that on 10.12.2003, another transfer order was issued, transferring her from K.M.C.H. to the Government Hospital at Nagapattinam. As she was on leave, the transfer order was affixed on the door of the petitioner's house, which was noticed by the petitioner only on 3.1.2004.

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6.In the affidavit, the petitioner has given further details regarding the various complaints sent by her to several authorities. Reference is also made to O.A.No.1518 of 2004 filed before the Tamil Nadu Administrative Tribunal, praying to set aside the order of transfer dated 10.12.2003. The Tribunal, by its order dated 9.4.2004, disposed of the said O.A. with a direction to the respondent to accommodate her at Chennai, if possible. Thereafter, she filed W.P.No.15248 of 2004 to quash the order of the Tribunal. An order of interim stay was granted by the High Court on 2.6.2004.

7.Again, on 30.7.2004, a detailed representation was sent to the Hon'ble Chief Minister, detailing the various atrocities alleged to have been committed by the fifth respondent. In the meanwhile, her counsel withdrew the Contempt Petition which was filed before this Court, alleging disobedience of the interim order granted in W.P.No.15248 of 2004.

8. In the affidavit, the petitioner had given details of further representations made to various authorities, inclusive of the Governor of Tamil Nadu on 29.11.2004, requesting sanction to prosecute the fifth respondent on grounds of molestation, harassment, both mentally and physically and under the provisions of the Protection of Civil Rights Act, 1955 and Protection of Human Rights Act, 1993. The allegations made in the several complaints disclose prima facie commission of cognizable offences by the fifth and sixth respondents. However, till date, the respondents, who are duty bound to register a case , have failed to register a case and to investigate the complaint. Non-registration of the complaint would disclose that the State Government/police was not prepared to investigate the case in an objective manner.

9. The petitioner further submits that in spite of the various judgments of the Supreme Court, there are incidents of sexual harassment at the place of work as well as violations of fundamental rights and of gender equality and the right to life and liberty. According to her, the main culprit is the fifth respondent and he being a Minister, an enquiry has to be conducted by an independent agency. The state Government has not taken any action in spite of several complaints of gross violation of human rights.

10. In the counter affidavit filed on behalf of the first respondent, the Deputy Secretary to Government, it is stated that the petitioner had sent several petitions to various authorities, including a petition dated 6.11.2003 to the Chief Minister's Cell and on 9.12.2003 to the Government. The petitions were examined by

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the Director of Medical Education and a factual report was prepared and sent to the Chief Minister's Special Cell and it is evident from the report that the allegations of the petitioner were false. The report reveals that a Committee of Senior Medical Officers were appointed by the Dean, which had concluded after due enquiry that the petitioner was guilty of using abusive and offensive language against the staff repeatedly and it was also opined that a psychiatric evaluation of the petitioner would be necessary and recommended urgent action by the Administration.

11.It is further stated that the petitioner's conduct had spoiled the congenial atmosphere in all the institutions wherever she was posted. Therefore, it was decided to post her on the non-teaching side. Though there were several complaints against her, the Government had been taking a lenient view and not taking any action against the petitioner, as she has lost her husband and she also belongs to a socially backward class. The petitioner herself had sought for transfer by letter dated 9.12.2003 and as such, the petitioner was posted at Government Hospital, Nagapattinam, on 10.12.2003. The subsequent request of the petitioner to post her at Chennai was duly considered and she was posted at E.S.I. Hospital, Chennai, by proceedings dated 7.4.2005. It is further stated that the petition sent to the Governor of Tamil Nadu was also forwarded to the Government. The petitioner had made several allegations against several dignitaries, including the Hon'ble Judges of the High Court in her petitions. The antecedents of the petitioner would reveal that she is always in the habit of making reckless and unwanted allegations against all the colleagues. After examining of the issues, the Government took the view that the petitions sent by the petitioner do not deserve any further action. Subsequently, she made a complaint before the State Human Rights Commission on 7.9.2004, which was registered as Case No.7506 of 2004. The complaint was closed on 30.9.2004 on the ground that the same pertains to service matter and is outside the purview of the Commission.

12. On the basis of the recommendations of the enquiry report, the Government issued G.O. (2D) No.68, Health dated 3.12.2004, constituting a Committee for psychiatric evaluation of the petitioner. The petitioner was directed by the fourth respondent to appear before the Committee on 5.12.2004. However, for reasons best known to the petitioner, she did not appear before the Evaluation Committee.

13.In the affidavit filed by the second respondent, the Commissioner of Police, it is stated that the copy of the telegram sent by the petitioner on 22.9.2003 was received in the office of the second respondent. The same was directed to be enquired by the Kilpauk Police by endorsement dated 22.9.2003. The Inspector of

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Police, G3 Police Station, enquired into the telegram dated 22.9.2003, and the petitioner appeared in the Police Station on 26.10.2003 and gave a letter to the effect that there was no necessity to take any action on her complaint. Therefore, the complaint was finally closed. It is true that the petitioner sought protection by her application dated 5.1.2004 to observe fast in front of the office of the Director of Medical Education, without mentioning any date in the application. The said request was rejected by the respondent on 12.1.2004. It is further stated that the seventh respondent cannot investigate the complaint inasmuch as under Section 3 of the Delhi Special Police Establishment Act, 1946, there has to be a notification as regards the offences in respect of which only the C.B.I. could investigate. There was no need for the C.B.I. to step into the investigation. In the absence of any consent by the State Government, the C.B.I. cannot step in for any investigation.

14. A joint counter affidavit has been filed by respondents-3 and 4, the deponent being the third respondent, Director of Medical Services. After referring to the entry of the petitioner in the service, it is stated that from the year 1999 onwards, the fourth respondent has been receiving lot of serious complaints from various quarters. The first complaint was received from Dr.Mythili Bhaskaran, Reader, Stanley Medical College Hospital. It was brought to the notice of the authorities that the petitioner was not involved properly either in teaching, evaluation or any other departmental activities. On 23.7.1999, the Dean, Stanley Medical College, had reported that the petitioner was using foul language against her students in the hospital at odd hours. Therefore, she had to be transferred and she was transferred to Government Kasturba Gandhi Hospital, Chennai. Even thereafter, complaints were received from the Superintendent of the Kasturba Gandhi Hospital about the indecent behaviour of the petitioner of using unparliamentary and filthy words, thus causing annoyance to the administrators. Many more complaints were received while she was working as Tutor in Pharmacology at Madras Medical College, Chennai, again about her misbehaviour, using unparliamentary words and not keeping the dignity and decorum. Therefore, a committee was constituted on 11.11.2002 nominating four Senior Medical Officers to enquire into the complaint. The Enquiry Committee had given a detailed report and was of the unanimous opinion that the petitioner was guilty of using abusive and offensive language in alleging with sexual innuendo against everyone including the last grade servants.

15. The petitioner was, thereafter, directed by the fourth respondent to appear before the Committee for an enquiry on 19.12.2002. Though she attended the enquiry, she left in the middle

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without answering the questions put by the Committee. Another communication was sent to the petitioner, calling upon her to appear for an enquiry before the Committee on 3.1.2003. The petitioner not only refused to receive the communication, but also did not appear for the enquiry. Thereafter, the enquiry was proceeded further by examining a number of witness and the enquiry concluded on 25.3.2003. The Committee expressed that psychiatric evaluation of the petitioner would be warranted and urgent action was directed to be taken to save the innocent staff of the college from unnecessary harassment by the petitioner. Based on the report submitted by the Senior Doctors, orders were issued on 10.7.2003, transferring and posting her at R.S.R.M. Hospital, Royapuram. In the counter affidavit, certain incidents and facts relating to the alleged misconduct of the petitioner during the year 2002-2003 have been set out in detail.

16.It is also stated that the petitioner's activities disrupted the smooth functioning of the medical institutions wherever she was working. The Government had been taking a lenient view and not to take disciplinary action against the petitioner.

17.The contention of the petitioner regarding the nature of the order passed by the Tamil Nadu Administrative Tribunal is also denied and the reference is made to the order of the Tribunal dated 8.7.2004. After referring to many antecedents, it is stated that the petitioner was always in a habit of throwing false allegations against almost all officers, co workers and other colleagues. The entire writ petition is only intended to avoid joining the E.S.I. Hospital, Chennai, and also to forestall the disciplinary actions against her. The intention of the petitioner would be evident by the inconsistent statements made by the petitioner in her representations.

18.A very detailed counter affidavit has been filed by the fifth respondent/Minister for Health and Family Welfare, denying all the allegations of the petitioner of sexual harassment or any other physical or mental torture, as claimed by the petitioner. According to the fifth respondent, he had never met the petitioner prior to 19.9.2003. Regarding the incident on 19.9.2003, the respondent would state that in a news item published on 12.9.2003, it was reported that a mother, after delivering her child, had abandoned the child and left the Labour Ward of K.M.C.H. and consequently, the child was left in the care of the Hospital. This created a problem in the administration and therefore, he conducted a surprise visit on 19.9.2003. When he visited the labour ward, the duty Doctor namely, the writ petitioner, was not available at 8.45 a.m. and did not report for duty till then. In terms of working hours, she should have reported for duty at 7.00 a.m. itself. The fifth respondent was informed that she never cares to attend to

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duty nor was she keen in attending to duty even during duty hours. Therefore, instead of waiting for the arrival of the petitioner, he visited the other wards in the Hospital and returned to the labour ward again at 9.45 a.m. and even then, the petitioner had not arrived. While he was in a discussion on general aspects, she entered the place around 10.15 a.m. and she was pointed out to him to be the duty doctor. Thereafter he had asked her why she was not present during the duty hours and she falsely pleaded as if she had obtained permission for one hour from the Head of the Department. There was no such written request or orders to the said effect. The Dean and others who were present, did not say anything good about the petitioner and everyone complained about her attitude and callous approach to duty. The way she was working was not helpful to the public. This made the fifth respondent to instruct the authorities to transfer her to some other Department in K.M.C.H. or to the Government Peripheral Hospital, Anna Nagar. Even though he had given instructions on 19.9.2003 itself, the transfer was made only on 3.11.2003, that too, based on complaints by all the Assistant Surgeons of the Hospital. It was only thereafter, she was transferred.

19.In the counter affidavit, the fifth respondent had dealt with the various allegations contained in the writ petition and the fifth respondent has stated that all the allegations are not only false, but was of usual pattern of the petitioner making certain allegations in a stereo-typed manner. After dealing with many of the complaints, the fifth respondent states that the usual methodology which the petitioner adopts was to invent and making false allegations. Her attempts were only to avoid transfer by threat and intimidation and she also takes her gender as a tool to achieve the said purpose.

20. The fifth respondent has also stated that it was sad and unfortunate that such allegations are being made against himself who was discharging his public duties. He is a law graduate having practised in the High Court for about 18 years and had been a law officer. He has been in public life for at least 15 years and held several positions including having been a Member of Parliament (council and states). He has also served in several committees of the Parliament and he has held various positions as Minister for P.W.D., Revenue Department and presently, the Health portfolio. He has never faced such reckless allegations and if such reckless allegations could be made on persons for the sake of personal benefits only persons without integrity and morals can come to politics in future.

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21.The sixth respondent, Dean of the College, has filed a separate counter affidavit denying the various allegations and raising contentions in the same manner as in the counter affidavit of the Government and respondents-3 and 4. He has denied the allegations made against him.

22.The petitioner has filed reply affidavits with reference to all the counter affidavits filed on behalf of the several respondents and the fifth respondent had also filed a rejoinder affidavit to the reply filed by the petitioner.

23. Mr.S.Veeraraghavan, learned senior counsel for the petitioner, very vehemently contended that this is a specimen case of woes of a woman that too belonging to scheduled caste being subjected to sexual abuse and humiliation by men in power and yet, does not get proper justice or relief from the highest authorities, despite her knocking at the doors of several authorities right upto the Hon'ble Chief Minister. Learned senior counsel took me elaborately through the various records and correspondence to substantiate his contention that all the repeated complaints of the petitioner to the different authorities fell into deaf ears. The departmental authorities and the Police Department did not take any step to hear the cry of the petitioner for justice. In order to disprove the contention of the police that they had not received many of the complaints as enlisted in the writ petition, learned counsel produced postal acknowledgments. Reference was made to various judgments especially of the Supreme Court to drive home the point that in cases where the local bigwigs and men in power in the State Government were involved, it was always desirable to entrust the investigation to a different agency. He further contended that no one will be prejudiced by the investigation being entrusted to an independent agency like the C.B.I.

24.Mr.N.Jothi, learned counsel appearing for the fifth respondent, against whom allegations of sexual abuse have been made mainly, in contrast, submits that this is a typical case of the undesirable growing trend of some of the vicious minded persons, who revel in making false allegations by wearing the shield of their sex and community. The fact that they are women or that they belong to scheduled caste appear to be a licence to them to do whatever they like and get away with it. Learned counsel took me through the several materials in support of his contention that the behaviour of the petitioner throughout her career was one of neglect of duties, flinging false allegations and accusations against superiors, equal staff members, workmen of the last grade and never had any due regard to the hierarchy of the officials. She was

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always accustomed to a habit of abusing everyone in vulgar and vicious manner. Learned counsel took me through some of the proceedings which had been initiated against her in the past much earlier to the incident, which, according to him, reflects that she was always accustomed only to such false and malicious accusations against everyone who come in her way and who would not oblige her. This is not the first time she is making such allegations of sexual abuse and the records disclose that the same has always been the regular pattern of her behaviour.

25.Dealing with the incident on 19.9.2003, after referring to the facts stated in the counter affidavit of the fifth respondent, learned counsel would submit that the confrontation was only due to the negligence of the duty by the petitioner when the fifth respondent had visited the hospital on a surprise check. In the counter affidavit, he has positively stated that she has not met the petitioner any time before 1993. In the reply filed by the petitioner, there is no specific denial of the said assertion by the fifth respondent, which would go a long way to establish that the allegations against the fifth respondent were frivolous and motivated. The entire vicious exercise by the petitioner was only to avoid the transfer and to forestall the disciplinary proceeding which was bound to follow because of the serious misconduct of the petitioner.

26.Learned counsel would further contend that the allegation that the fifth respondent was visiting the hospital from office at 6.00 a.m. was not at all possible, considering the position which the fifth respondent was holding and the security around him. His activities and time schedules are completely recorded and there is absolutely no truth in the said statement of the petitioner.

27.Learned counsel for the fifth respondent also referred to the proceedings initiated by the petitioner before the Tamil Nadu Administrative Tribunal, questioning the order of transfer dated 10.12.2003, in which, there was absolutely no reference to any misbehaviour by the fifth respondent, much less of any sexual harassment.If the present allegations against the fifth respondent are true, the petitioner would have certainly raised the said issue before the Administrative Tribunal, considering that an order of transfer can be questioned only on limited grounds such as mala fides and personal motives. As regards the various representations, learned counsel would state that some of them are manipulated and do not correspond with the copies filed with the writ petition.

28.Learned counsel also dealt with elaborately, the various representations sent by the petitioner on different occasions and had, in particular, pointed out the representation dated 27.9.2004,

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addressed to Mr.Justice Thangaraj, Vice Chairman, State Human Rights Commission, in which, she has abused the Judges of the High Court without any justifiable reason. Reference was also made to a letter dated 13.10.2004 again addressed to Justice Thangaraj, in which, she has abused everyone by using filthy language including Judges of the High Court, Mrs.Sheela Rani Sungath, Health Secretary, Dr.Sundar Devan, I.A.S., the Hon'ble Chief Minister and others by using very abusive and filthy language. The said conduct on the part of the petitioner would reveal the real nature and character of the petitioner and severe action has to be taken against her for such vulgar and abusive behaviour. The mere fact that she belongs to a scheduled caste community and that she happens to be a lady cannot justify her behaviour and she cannot be let off without appropriate action being taken against her. Proper investigation has been conducted by the police and the authorities concerned and only after finding that there were no materials in her complaint, no further action had been taken. Learned counsel also referred to several authorities in support his submission that such frivolous complaints should be dealt with strongly and that such individuals cannot be allowed to go scot-free.

29.Mr.A.L.Somayaji, learned Additional Advocate General appearing for the Government, referred to the various departmental proceedings initiated against the petitioner much earlier to the present set of facts which arose on 19.9.2003 and would submit that the conduct of the petitioner was never normal and she appears to have been exploiting the fact that she belongs to a scheduled caste community and that she happens to be a lady. Though many serious complaints have been made against her even earlier and she was also found guilty of the charges, no serious action was taken against her only on sympathetic grounds, which appear to be exploited now by the petitioner.

30.In matters where investigation is sought for by the C.B.I., the Court cannot be guided by mere allegations alone and the petitioner should be able to make out a prima facie case in favour of the said allegations before the High Court directs the C.B.I. to investigate. Reference is made to the judgment of the Supreme Court in SECRETARY, MINOR IRRIGATION & RURAL ENGINEERING SERVICES Vs. SAHNGOO RAM ARYA & ANOTHER (2002 (2) CTC 610). Many of the allegations are proved to be false and frivolous and which should be sufficient to throw out the complaints without any further investigation vide Judgment of the Supreme Court in S.P.CHENGALVARAYA NAIDU Vs. JAGANNATH (1994-1-L.W. 21).

31.In reply, Mr.S.Veeraraghavan, learned senior counsel representing the petitioner, chose to reiterate the submissions already made by him in his earlier arguments. In order to disprove

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the contention of the respondents that many of the complaints have not been received by the Government/Police, the petitioner had produced postal acknowledgments. He would also state that the scope of the writ petition is only for an investigation by an independent agency in view of the fact that the Minister of the State Government is involved. At this stage, it will not be open to the Court to state anything as regards the truth or otherwise of the allegations and counter allegations. As regards the allegation that the petitioner was indulging in abusive and filthy accusations against several persons and various authorities, learned counsel would state that some of the communications may reflect the anger and desperation of the petitioner and the only fact that she had used certain harsh expressions cannot disprove the basic allegations made by the petitioner, namely, sexual abuse against the fifth respondent and theother respondents. Learned counsel refers to a series of judgments of the Supreme Court, whereunder, the Supreme Court had expressed that in complaints involving high dignitaries of the State Government, it was always desirable, and in the interest of the respondents themselves, to submit themselves to investigation by a Central Agency.

32.Reference was also made to the judgment of the Supreme Court in MANIYERI MADHAVAN Vs. SUB INSPECTOR OF POLICE (AIR 1994 SC 1033) in support of his contention that for ordering C.B.I. enquiry, consent of the State Government under Section 6 of the Delhi Special Police establishment was not necessary.

33.I have considered the submissions of both sides with the seriousness with which the issue requires to be dealt with.

34.On the petitioner's side, it is stated that she has been subjected to sexual harassment by the fifth respondent with the active involvement and assistance of the Dean and orders of transfer were issued by the D.M.E. at the instance of the fifth respondent and that her repeated complaints had absolutely no response from the authorities only because of the reason that the fifth respondent is a Minister and she happens to be a widow and belonging to Scheduled Caste community.

35. In contrast, according to the fifth respondent and the other official respondents, the petitioner was always given to such abusive and false allegations against everyone she disagreed with and the present vicious complaints about the fifth respondent and others have been made only with a motive to extricate herself from the order of transfer and the impending departmental action for her improper and provocative behaviour. The fact that many proceedings were initiated against her even earlier would expose such qualities in her. The Government and the Police had properly enquired into the complaints and found them to be baseless. Conceding her prayer,

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would only mean giving premium to an attitude of blatant exploitation of the fact that a person happens to be a woman, that too belonging to a scheduled caste.

36.There can be no doubt over the position that ordering of investigation by C.B.I. cannot be granted just for the asking and that the petitioner should disclose at least some prima facie case. But having regard to the nature of this case, there is no possibility of recording any prima facie satisfaction of the truth of the complaint for the simple reason that the nature of the complaint is such that the issues cannot be decided only on the basis of affidavits and counter affidavits. No conclusions can be arrived at unless individuals and witnesses concerned are directly examined and cross-examined. Prima facie satisfaction can be expected only in cases like a missing person ((1996) 7 SCC 20), allegations of torture (1995 Supp. (3) SCC 736), large scale defalcation of public funds (AIR 1996 SC 1515). In such cases, the Supreme Court had ordered enquiry by independent agency (C.B.I.) and prima facie satisfaction was available in the very nature of the allegations, namely, injuries on the person tortured in the custody of the police, a person physically missing from the society and large scale defalcation of funds which are available on record. But in a case of this type where sexual abuse and torture being an issue which is personal and known between only those two individuals, prima facie satisfaction cannot be recorded only on the basis of affidavits and counter affidavits without any oral evidence being taken and watching the demeanor of the witnesses, etc. Therefore, at this stage, it is not possible for this Court to record any finding of prima facie satisfaction.

37.In the said background, the only aspect I can possibly look into is whether the personalities involved is such that it would require independent investigation by an agency unconnected with the State Government over which the Minister will have no control. The issue is more of the requirement that justice should also appear to be done. It is more a question of ensuring public confidence in the investigation and its outcome and not because the Court has no confidence in the local police or the departmental authorities who have already come to the conclusion that the complaint is false.

38.In STATE OF BIHAR Vs. RANCHI ZILA SAMTA PARTY (AIR 1996 SC 1515), the allegation related to large scale defalcation of public funds in the accounts of Animal Husbandry Department of the State Government. The High Court took away the investigation from the State Police and entrusted it to the C.B.I. On appeal, the Supreme Court held as follows:

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"7. The only question then is whether this is a fit case for our interference under Article 136 of the Constitution? The exercise of the power under Article 226 of the Constitution in a public interest litigation was not to give any advantage to political party or group of people, as apprehended by counsel for the appellants. It was also not to cast a slur on the State police. It was done to investigate corruption in public administration, misconduct by the bureaucracy, fabrication of official records, and misappropriation of public funds by an independent agency that would command public confidence. We are, therefore, of the opinion that the direction given by the High Court appears to be just and proper and calls for no real interference. "

39. In PARAMJIT KAUR Vs. STATE OF PUNJAB ((1996) 7 SCC 20), the Supreme Court was concerned with a case of kidnapping by local police. The Supreme Court held as follows:

"16. Mr.M.L.Sarin, learned Advocate General, Punjab has very fairly stated that keeping in view the serious allegations levelled by the petitioner against the officers/officials of the Punjab Police, it would be in the interest of justice that the investigation in this matter be handed over to an independent authority. Even otherwise, in order to instil confidence in the public mind and to do justice to the petitioner and his family it would be proper to withdraw the investigation from Punjab Police in this case. We, therefore, direct the Director, Central Bureau of Investigation to appoint an investigation team headed by a responsible officer to hold investigation in the kidnapping and whereabouts of Khalra. We further direct the Director General of Police, Punjab, all Punjab Police officers concerned, Home Secretary and Chief Secretary, Punjab, to render all assistance and help to the CBI in the investigation. "

40. In R.S.SODHI Vs. STATE OF U.P. (AIR 1994 SC 38), the issue was oneof encounter death alleged to have been caused by the local police. The State Police took the stand that the State Government had taken all prompt and proper action and the State Government should be allowed to complete its function without interference by

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outside agency. The Supreme Court, though did not disagree with the claim of the State Government that they had acted properly, yet, observed as follows:

> "2. We have examined the facts and circumstances leading to the filing of the petition and the events that have taken place after the so-called encounters. Whether the loss of lives was on account of a genuine on a fake encounter is a matter which has to be inquired into and investigated closely. We, however, refrain from making any observation in that behalf; we should, therefore, not be understood even remotely to be expressing any view thereon one way or the other. We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However, faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice entrust the investigation to the Central Bureau of Investigation forthwith and we so hope that it would complete the investigation at an early date so that those involved in the occurrences one way or the other may be brought to book. We direct accordingly. In so ordering we mean no reflection on the credibility of either the local police or the State Government but we have been guided by the larger requirements of justice. The writ petition and the review petition stand disposed of by this order. "

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41.The above three cases make it very clear that the Supreme Court, without recording any finding of prima facie satisfaction, yet ordered investigation by the C.B.I. only on the basis of the nature of issues and personalities involved and the need to ensure impartial investigation and confidence in the minds of the public.

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42. Therefore, in this case, my line of thinking is as follows:

Here is a case in which a State Minister is implicated. The State police, on their own investigation, had already come to a concluded opinion that the complaint is false. Some of the complaints for which acknowledgments have been produced had not been specifically dealt with by the police either in their investigation or in the counter affidavit. The Director of Medical Education against whom certain specific allegations have been made by the petitioner, in her affidavit, has not chosen to file a separate counter affidavit. The joint counter affidavit filed by respondents-3 and 4 does not deal with specific allegations against the fourth respondent to the effect that she issued transfer orders only at the instance of the fifth respondent, and certain other allegations contained in the details of the complaints in paragraph 19 of the affidavit. Even the counter affidavit filed by the Dean/ sixth respondent is not satisfactory and does not deal with the specific allegations against him in paragraphs 7, 8, 10 and 19 of the petitioner's affidavit. The police also has to explain as to why the complaints by the petitioner were not registered. It is true that a telegram does not require to be registered. But, according to the petitioner, she has given complaints subsequently, both in person and by post. Certain acknowledgments have been produced before the Court. If it is true, then the police has to explain why such complaints were not registered, as required under Section 154, Cr.P.C. Therefore, there are certain aspects which require to be examined and dealt with, even apart from the conclusions arrived at by the police on their own investigation. Such an investigation has to be dealt with by the investigation agency in a detailed and comprehensive manner and the question is whether the State Police can be asked to do it. The answer has to be in the negative, since the State police had already taken a positive stand that the complaints are false. Even ignoring the fact that the fifth respondent happens to be a Minister, I would have reposed confidence in the State police and would have directed them to make a fresh and comprehensive investigation, if only the police had taken a stand in their counter affidavit that they have an open mind and are prepared to consider and investigate all aspects of the petitioner's complaint. On the contrary, they have expressed a concluded opinion against the petitioner leaving no other alternative to this Court, except to entrust the matter to a different agency.

43. It is true that Mr.Jothi was able to show several features of the conduct of the petitioner as suffering from impulsive, abusive and motivated behaviour. But that alone cannot lead to rejecting

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her complaint without proper investigation or enquiry. This Court has no means of coming to any definite conclusion only on the basis of affidavits and counter affidavits. Therefore, her complaint has to be independently dealt with and should be taken up for further action if there is truth and thrown out if the allegations are found to be false. In the said background, the best course appears to be to entrust the enquiry to a third party investigation agency mainly for the purpose of ensuring public confidence, bearing in mind the judgments of the Supreme Court, as mentioned above. But at the same time, I am inclined to hold that C.B.I. is not the only authority which should be assigned to do it at least for two reasons. Firstly, the C.B.I. is already overburdened with work and they are already complaining that they do not have sufficient staff and hands and unable to comply with the time frame, considering that in recent times, they have been assigned with many such investigations by the Courts.

44.Secondly, sexual abuse is an issue which could be better entrusted to a body or panel of experienced individuals and persons who would have better exposure to the law of human rights and gender sensitiveness. issue in VISHAKA In fact, that is how the Supreme Court had viewed the Vs. STATE OF RAJASTHAN (AIR 1997 SC 3011) and also in subsequent pronouncements. What was contemplated in Vishaka's case was to set up a Complaints Committee. In fact, the Supreme Court had laid down that the Complaints Committee should be headed by a woman and half of the committee should consist of women. Even if that may not be possible in each and every case, it is at least desirable to entrust the enquiry to an experienced body/Committee of persons. In fact, even in the recent Bill proposed by the Government, namely, Sexual Harassment of Women at Work Place (Prevention & Redressal) Bill, 2004, the Bill contemplates investigation and enquiry only by a Complaints Committee. In the case of PURNIA SHARMA Vs. UNIVERSITY OF BOMBAY, a Division Bench of the Bombay High Court, while disposing of W.P.No.2192 of 2004 dated 24.8.2004, held that the action taken by the College in appointing Mr.Justice A.C.Agrawal, a retired Judge of the High Court to enquire into the matter was proper. However, as subsequently the University came forward with a decision to appoint a Committee for holding an enquiry into the complaint of sexual harassment, the Division Bench took note of the said offer and requested Justice A.C.Agrawal not to proceed with the enquiry.

45.Therefore, in cases of complaints of sexual harassment, the present trend is to assign the enquiry to a Committee of independent persons. Considering that the allegations of sexual abuse in this case is not only against the fifth respondent, but also against the sixth respondent who is a Government servant, it is desirable that the enquiry is conducted by an independent body/Committee of persons and the Government can be directed to

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take further action on the findings of the report of the Committee.

46. It is true that any such enquiry is bound to be painful to any person who may be falsely implicated. But one has to face such situations and realities and the rigour of law and when he comes out cleared of the allegations, he should feel happy.

47. While parting with this case, I would be failing in my duty if I do not deal with one aspect of the conduct of the petitioner. The allegations now made by her against the fifth respondent and others may not may not be true, which should be dealt in accordance with law, as pointed out above. But there is no justification for the abusive and provocative behaviour of the petitioner. If one reads some of the letters especially dated 27.9.2004 and 23.10.2004, both addressed to Mr.Justice Thangaraj, Chairman of the State Human Rights Forum, it is seen that she had used abusive and filthy language against some of the Judges of the High Court because they did not oblige her with favourable orders and against Mr.Justice Thangaraj himself and making sarcastic and uncharitable remarks about the Hon'ble Chief Minister and the then Health Secretary, who are themselves women, and against a few I.A.S. Officers. Some of the expressions are very vulgar and not printable. Even after this was repeatedly pointed out by Mr.Jothi as reflecting the character of the petitioner, there was no attempt on the part of the petitioner either to withdraw the said letters or even to file an affidavit tendering an apology for such conduct. Assuming that all her allegations against fifth respondent are true and she was upset that no immediate action was taken on her complaint, that is no justification for behaving in such a fashion. She is an educated and experienced Doctor and knows how the official machinery has to move and petitions before Courts and the Government can be dealt with only in a manner known to law and not according to her whims and fancies. On the contrary, when things do not move according to her wishes, she abuses everyone including women and dignitaries belonging to her own community in filthy language. She would not even condescend to withdraw such allegations or apologise when the counsel for respondent had expressed his pain and anguish at such behaviour. One wonders what is the cause for such an attitude. Does she think that being a woman or belonging to Scheduled Caste provide her any immunity? This is not the freedom or equality of caste and sex for which great reformers like Periyar E.V.R. or Dr.B.R.Ambedkar or Poet Subramanya Bharathi fought for relentlessly. It is high time that she and her advisors realise that if Varnashrama dharma and gender chauvinism are bad and unjust, it would be equally so applying them on the reverse direction, which would only result in and justify retaliation. Such chauvinistic outbursts are usually resorted to in recent times not from any social angle in the interest of their gender or caste but

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only for personal and selfish reasons and gains. If anyone is really interested in the upliftment of downtrodden communities and welfare of women, they should discourage such tendencies. Yet, in providing relief to the petitioner in the writ petition, I have chosen to ignore the attitude of the petitioner with the idea that any feeling of anger on the part of the Court should not deny relief to the petitioner to which she may be otherwise entitled to. The petitioner is severely warned not to repeat such reprehensible conduct in future failing which, she will not be entitled to any relief as contemplated hereunder.

48. Now coming to the constitution of a Committee, I am inclined to feel that it would be appropriate to request the following individuals to take up the assignment, hold a comprehensive enquiry and submit their report to the State Government:

1. Mr.Justice M.Maruthamuthu (Chairman)
New No.21 (14) Aspiran Garden,
1st Street
Chennai-600 010.
Phone: 26445323

2. Mr.Rosanlal Handa
Retired Director General of Police
No.42, Block-I
Near Chinthamani Supermarket
Anna Nagar East
Chennai-600 102.

3. Ms.A.ArulmozhiAdvocate
19, 2nd Trust Main Road
Mandavelipakkam
Chennai-600 028.

49. I am inclined to give the following directions:

(1) The Government is directed to fix a proper venue in consultation with Mr.Justice Maruthamuthu, the Chairman and provide all infrastructural facilities including a shorthand Steno-typist.

(2) The Government is directed to file typed sets in triplicate containing (a) all the pleadings of both sides in the writ petition and (b) copies of all documents on which Government relies. Likewise, the petitioner is directed to file a typed set in triplicate containing all materials on which they choose to rely on. Any further affidavits, if necessary, may be filed by both sides. Both sides are directed to comply with this requirement within a period of two weeks.

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(3)The Committee may also take oral evidence as the parties may choose to tender and also be permitted to cross-examine.

(4)The enquiry being only a substitute for investigative process, shall be open only to parties concerned and their counsel alone. No third parties shall be allowed.

(5) The Committee is requested to conclude the enquiry and submit their Report to the Chief Secretary to the Government, for further action, preferably on or before 1st of September, 2005. The Government shall take further action depending on the outcome of the report.

(6) The Chairman shall be paid Rs.25,000/-per month and the Members shall be paid Rs.20,000/-each per month, by the Government, till the submission of their report to the Government.

(7) All parties shall ensure full and prompt cooperation to the Committee for early disposal without seeking any adjournment of the hearings.

50. It is made clear as pointed out above, the entrustment of the enquiry before an independent Committee is not on the basis of any prima facie satisfaction of the allegations against the fifth respondent. have not rendered any finding on the merits of the mutual contentions. Such an enquiry is ordered mainly for two reasons. Firstly, the State Police had already expressed their views and conclusions categorically against the petitioner and hence there is no scope for asking them to take up the enquiry again. Secondly, considering the personalities involved, it is necessary to ensure public confidence in the enquiry into the allegations.

51.The Committee is also requested to ignore any observation made above in this order either for or against any of the parties but to render their findings only on the basis of the materials before them and on their own independent appreciation, without reference to any of the observations as above.

52.The writ petition is disposed subject to the above observations. Connected W.P.M.P.No.44047 of 2004 is closed.

10.5.2005

This petition having been posted on 23.8.2005 for being mentioned in pursuance to the order of this Court dated 10.5.2005 and made herein in the presence of the aforesaid Advocate, the

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Court made the following order:-

The above writ petition is posted today for "Being Mentioned".

2. Today a communication has been received from the Committee with a request to extend the time limit to submit the report to the Government upto 1.12.2005. Accordingly, the time limit is extended upto 1.12.2005.

3. The Committee has also forwarded a letter No.74/JMMEC/2005-1 dated 19.8.2005 to make available the records of the Government which may be sent to the Section Officer. The records were handed over to the learned Government Pleader at the end of the hearing when the orders were passed. The Government Pleader is directed to hand over the records to the Section Officer of the Committee.

4. Mr.P.Veeraraghavan, learned senior counsel appearing for the petitioner states that the records ought to have been left with the Registrar General and the Government Pleader should not have taken custody of the files as they are confidential in nature and as the enquiry being conducted by the Committee, which is only a continuing process as initiated under the writ petition.

5. The records of the Government were directed to be handed over to the learned Government Pleader as is the usual practice of this Court while all the writ petitions are disposed of finally. After the order was delivered, no such request was made before this Court on behalf of the petitioner either on that day or even the following day to keep the records with the Registrar General. The records were handed over only the next day. This Court had only followed the usual practice and in the absence of any such request, the petitioner could not expect any deviation from the usual practice.

nvsri

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To:

1. The Secretary,
Govt of Tamil Nadu
Health & Family Welfare Dept.,
Fort St. George
Chennai-600 009.

2. The Commissioner of Police
Greater Chennai, Egmore
Chennai-8.

3. The Director
Medical & Rural Health Services
DMS Compound Chennai-600 006.

4. The Director of Medical Education
Kilpauk, Chennai-600 010.

5. The Minister for Health & Family
Welfare (Thiru N.Thalavai Sundaram)
Govt of Tamil Nadu, Fort St George,
Chennai 9.

6. The Dean,
(Dr.Balakrishnanaraj,)
Kilpauk Medicial College,
Hospital, Chennai

7. The Regional Director
Central Bureau of Investigation
EVK Sampath Building
Chennai-6.

8. Mr.Justice M.Maruthamuthu
New No.21 (14) Aspiran Garden,
1st Street
Chennai-600 010.

To be substituted to the Order already despachted on 10.5.2005.

9. Mr.Rosanlal Handa
Retired Director General of Police
No.42, Block-I
Near Chinthamani Supermarket
Anna Nagar East
Chennai-600 102.

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10. Ms.A.Arulmozhi Advocate |
19, 2nd Trust Main Road
Mandavelipakkam |
Chennai-600 028.

11. The Chief Secretary |
Government of Tamil Nadu
Fort St. George
Chennai-600 009. |

12. The Govt Pleader,
High Court, Madras. |

+ 1 CC to Govt. Pleader
SR NO 35456 |

ra(CO)
SR/29.8.2005 WP.No.36690/2004

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